Supreme Court, U.S.
FILED

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(1)

No.

IN THE

Supreme Court of the United States

INDYWAY INVESTMENT,
Petitioner,

vs.

DEBRA OPRI, an individual,
OPRI & ASSOCIATES,
a Professional Law Corporation,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEALS
SECOND APPELLATE DISTRICT, DIVISION ONE

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the State of California's application of a statute that makes a default tax sale of real property by the County of Los Angeles conclusively valid, when the County executed and recorded an original and *only* notice of power to sell tax-defaulted property identifying the state assigned item numbers selected for the state assigned auction sale and auction year that the tax-defaulted property was placed in but was subsequently used for a completely different auction sale and auction year, fails to provide due process of the law to real property owners, and so violates the Fifth Amendment and the Fourteenth Amendment.

2. Whether the State of California's application of a statute that makes a default tax sale of real property by the County of Los Angeles conclusively valid, when the County executive deleted the original and *only* recorded notice of power to sell tax-defaulted property and therefore required a new notice of power to sell tax-defaulted property to be executed and recorded prior to the noticed tax sale; and when the County rescinded the original and *only* recorded notice of power to sell tax-defaulted property, thereby rendering the original and *only* recorded notice of power to sell tax-defaulted property null and void because the real property had been redeemed, fails to provide due process of the law to real property owners, and so violates the Fifth Amendment and the Fourteenth Amendment.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner Indyway Investment, an unincorporated business trust, brought this civil action against its former attorney and her law firm. Indyway Investment is not a corporation, does not have a parent company, and there is no publicly held company that owns more than ten percent (10%) of Indyway Investment.

Respondents, Debra A. Opri was sued as an individual in personal capacity as the attorney of record for Petitioner, and her law firm, Opri & Associates, a professional law corporation, was also named a defendant.

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OPINIONS BELOW

All the Respondents participated in the trial court action and the appeal taken to the Division One of the Second Appellate District of the State of California. On November 29, 2007, Division One issued an unpublished opinion affirming the Los Angeles County trial court decision. A copy of that opinion is attached hereto as Appendix A. Petitioner filed a petition for rehearing with Division One of the Court of Appeals. On December 27, 2007, Division One denied the petition for rehearing. A copy of the denial is attached hereto as Appendix B.

Petitioner's appeal was based upon the Los Angeles County Superior Court judgment, statement of decision, and minute order. A copy of the Los Angeles County Superior Court judgment filed January 9, 2006 is attached hereto as Appendix C. A copy of the Los Angeles County Superior Court statement of decision filed on December 23, 2005 is attached hereto as Appendix D. A copy of the Los Angeles County Superior Court minute order dated December 23, 2005 is attached hereto as Appendix E.

On February 27, 2008, the Supreme Court of California, En Banc, denied Petitioner's request for a petition for review. A copy of that denial is attached hereto as Appendix F.

JURISDICTION

Division One of the Second Appellate District of the California Court of Appeal entered its judgment on November 29, 2007 and denied a petition for rehearing on December 27, 2007. The Supreme Court of California denied the petition for review on February 27, 2008. This petition is filed within 90 days of the latter date. This Court's jurisdiction is invoked under *28 U.S.C.A. §1257(a).*

> "Final judgments ... rendered by the highest court of a State ... may be reviewed by the Supreme Court by writ of certiorari ... where any ... right [or] privilege ... is specially set up or claimed under the ... statutes of ... the United States." *28 U.S.C. §1257.*

Where, as here, the state appellate court's judgment wrongfully deprives the petitioners, and all similarly situated real property owners in the State of California of their constitutionally protected rights by not resolving conflicts between a California statute that presumes a tax sale conclusively valid against federally protected rights of providing property owners due process of law before the taking of their property – the Court has jurisdiction to grant certiorari and hear and decide the case.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant provisions of the Fifth Amendment to the United States Constitution states, "No person shall ... be deprived of life, liberty, or property, without due process of law"; and relevant provisions of the Fourteenth Amendment to the United States Constitution provides, "Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

1. The Fifth and Fourteenth Amendments to the United States Constitution prohibit a state from depriving any person of life, liberty, or property, without due process of law.

2. This is an action for damages sustained by Petitioner Indyway Investment ("Petitioner") as a result of the legal malpractice committed by attorney Debra A. Opri and her law office Opri & Associates ("Respondents").

3. Petitioner owned certain properties located in Long Beach, California (the "Subject Properties"), which the County of Los Angeles (the "County") deemed them to be tax-defaulted properties by executing and recording original and *only* notices of power to sell tax-defaulted property in August 1997 identifying the state assigned item

numbers for the state assigned auction sale and auction year.

4. The County's execution and recordation of the original and *only* notices of power to sell tax-defaulted property reflected the state assigned item numbers that identified the state assigned auction sale and auction year that the Subject Properties were placed in, which were selected for the 1998A Auction Sale that was held on February 25, 1998.

5. The County subsequently canceled the status of the original and *only* recorded notices of power to sell tax-defaulted property by "EXECUTIVE DELETE" on February 3, 2000, prior to the tax sale.

6. The Subject Properties were not placed in but were pulled out of the 1998A Auction Sale of February 25, 1998.

7. The County allegedly sold the Subject Properties at a purported tax-defaulted property sale at the 2000B Auction of June 26, 2000 — even after the County had executive deleted the status of the original and *only* recorded notices of power to sell tax-defaulted property on February 3, 2000.

8. The County subsequently executed and recorded rescissions of notice of power to sell tax-defaulted property in January of 2001 because the Subject Properties were redeemed back to Petitioner.

9. Petitioner had hired Respondents to file a claim to set aside the tax sale of the Subject Properties. Instead, Respondents filed a claim for the excess proceeds from the sale, and failed to file a claim to set aside the tax sale of the Subject Properties. On June 16, 2004, Petitioner filed a verified complaint alleging legal malpractice and breach of contract against Respondents.

10. The parties' stipulated and the trial court ordered the bifurcation of issues at trial, so that it would first decide the issue of damages, namely whether a claim to set aside the tax sale of the Subject Properties would have been meritorious. The rationale for the bifurcation was that if damages could not be proven, there could be no case made for legal malpractice.

11. At trial and upon appeal, Petitioner contended that the County failed to follow the proper tax sale procedures under the *California Revenue and Taxation Code* requirements under *section 3691.1*, et seq. The original and *only* notices of power to sell tax-defaulted property for the Subject Properties were selected for the 1998A Auction Sale, *only*, which was held on February 25, 1998. Petitioner claimed that pursuant to *section 3691.1*, the County was required to execute and record a *new* notice of power to sell tax-defaulted property for the 2000B Auction Sale of June 26, 2000.

12. Also at trial and upon appeal, Petitioner attempted to prove that the County

executive deleted the original and *only* recorded notices of power to sell tax-defaulted property. Petitioner claimed that such an executive deletion would, in addition, require *another* "notice" to the real property's owners of another power to sell the property. The County did not execute and record *new* notices of power to sell tax-defaulted property pursuant to *section 3691.1*, after the County had "executive deleted" the original and *only* recorded notices of power to sell tax-defaulted property.

13. Petitioner challenged the County's actions of providing notice of the tax sale and the taking of real property without due process of law. Respondents claimed that the tax sale procedures were conclusively valid under *section 3711* and that Petitioner could not challenge the tax sale except upon proof of fraud.

14. Petitioner contended that the Subject Properties were redeemed back to Petitioner by virtue of the recorded rescissions of notice of power to sell tax-defaulted property. Petitioner attempted to prove that the recorded rescissions of notice of power to sell tax-defaulted property canceled the tax lien and provides notice to the whole world that the delinquent prior taxes have been redeemed pursuant to *California Revenue and Taxation Code section 4112*. Petitioner claimed that the redemption date of August 11, 2000 that is stated on the recorded rescissions of notice of power to sell tax-defaulted property redeemed the Subject Properties back to Petitioner.

15. Petitioner claimed that certificates of redemption exist for Petitioner, having number 020009330 attesting to the payment of the amount required to redeem the property assessed to Petitioner that is stated on the recorded rescissions of notice of power to sell tax-defaulted property. Petitioner believes it was prejudicial error for the lower courts to determine the recorded rescissions of notice of power to sell tax-defaulted property had no legal effect under *Revenue & Taxation Code, Section 4112.*

16. Here, Petitioner challenges the validity of the June 2000 tax sale conducted by the County for failing to provide statutorily-required notice to Petitioner which violated Petitioner's constitutionally protected right of due process before the taking of Petitioner's real property.

17. Petitioner contends that the Subject Properties could not be sold by the County because the County had executive deleted the original and *only* notices of power to sell tax-defaulted property from its system in February 2000, some four months prior to the June 2000 tax sale.

18. Additionally, Petitioner claims that the Subject Properties were redeemed in favor of Petitioner and the Subject Properties were returned to Petitioner as evidenced by the County's issuance and recordation of rescissions of notice of power to sell tax-defaulted property in January of 2001.

REASONS FOR GRANTING THE PETITION

California real property owners are currently subject to having their property taken without due process of the law. The *California Revenue and Taxation Code* that regulates and controls the definition, determination, notice and ultimate sale of tax-defaulted real properties have areas of conflict that leave the California real property owners unprotected by statute.

This case represents an example of such a situation where a "catch all" code section providing for a conclusive presumption of validity of a tax sale fails to provide answers for all questions. There is a conflict among code sections under the *Revenue and Taxation Code*[1] that control the sale of tax-defaulted real property by taxing authorities. The competing *Revenue and Taxation Code sections* are *section 3711* which provides for that a tax deed is conclusive evidence of the regularity of the tax sale; *section 3691.1* which provides for an execution and a recordation of a notice of power to sell real property; and *section 4112(c)* which provides that when the notice of power to sell real property recorded under *section 3691.4* is redeemed, the notice becomes null and void and the tax collector shall execute and record with the county recorder a rescission of notice.

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[1] Unless otherwise indicated, all code section references in this petition for writ of certiorari are to *California's Revenue and Taxation Code.*

Pursuant to *section 3711*, the issuance of a tax deed is conclusive evidence of the validity of the underlying tax sale, absent fraud or constitutional violations. The Court of Appeal agreed with the trial court that *section 3691.1* had been satisfied with a single recordation of notice of power to sell tax-defaulted property by the County in August of 1997. Petitioner contends that this issue concerning *section 3691.1*, whether the notice of power to sell tax-defaulted property is required only once, is undetermined and unanswered by California statute or case law.

This recorded notice of power to sell tax-defaulted property from the County pursuant to *section 3691.1* is a statutory prerequisite to its right to publish and place a tax-defaulted property in a state tax auction. Without the implementation of this statutory prerequisite (that gives the whole world constructive notice that a property is in a tax default status and is set to be sold at a future state tax auction), every other statutory procedure leading to a state tax auction has no validity because all the pertinent information needed to follow **constitutional due process requirements** are extracted from this recorded notice of power to sell tax-defaulted property such as, and not limited to, the state assigned item numbers that identify the state assigned auction sale and auction year that the tax-defaulted property are placed in of which the property owner may accurately and timely oppose or challenge.

In the present case, the County deemed the Subject Properties in tax default status by executing and recording original and *only* notices of power to sell tax-defaulted property on August 15, 1997 reflecting the state assigned item numbers selected for the 1998A auction sale, which were scheduled for February 25, 1998. However, the Subject Properties were not placed in but were pulled out of the 1998A auction sale. Petitioner challenged that the County failed to provide *another* notice of power to sell tax-defaulted property that the Subject Properties had become subject to the power of sale, pursuant to *section 3691.1*. However, the County proceeded to purportedly sell the Subject Properties in the 2000B Auction Sale without subsequently providing *another* execution and a recordation of a *new* notice of the power to sell tax-defaulted property.

Petitioner also claimed that the County did not follow the procedures for defaulted tax sale as set forth in the *Revenue and Taxation Code*. Petitioner contended that, prior to the tax sale, the County had executive deleted the original and *only* recorded notices of power to sell tax-defaulted property, therefore requiring a *new* notice of power to sell tax-defaulted property to be executed and recorded prior to tax sale of the defaulted property by public auction. Specifically, Petitioner challenged that the County failed to provide notice that the Subject Properties had become subject to the power of sale, pursuant to *section 3691.1*. The County proceeded to purportedly sell the Subject

Properties without subsequently providing *another* execution and a recordation of a *new* notice of the power to sell tax-defaulted property.

Petitioner challenged that the Subject Properties had been redeemed back to Petitioner by virtue of the County recording a rescission of notice of power to sell tax-defaulted property pursuant to *section 4112.*

At trial and upon appeal, Petitioner presented evidence and argued that the County's employees admitted that the original and *only* recorded notice of power to sell tax-defaulted property was "executive deleted." Respondents raised the defense of *section 3711*, supporting the validity of tax sale, and Petitioner attempted to prove that the County's actions amounted to fraud. However, in the face the "conclusive presumption" of the regularity of the tax sale proceedings, proving fraud by the County was a difficult burden to overcome.

Petitioner contends that the County's action in the present case may not have amount to "fraud" but the County's actions nonetheless were sufficient to deprive Petitioner of its due process protections against the taking of property.

Here, the County's actions of canceling the original and *only* recorded notices of power to sell tax-defaulted property by "executive delete" o n February 3, 2000, prior to the tax sale, prevented the tax sale of the real property by public auction

without an execution and a recordation of *a new* notice of power to sell tax-defaulted property, pursuant to *section 3691.1*, first being sent again to the owners of the real property.

Petitioner does not believe that it should lose its real property over the County's admitted actions of executive deleting the original and *only* recorded notices of power to sell tax-defaulted property. *Section 3691.1* provides that, "the tax collector shall execute a notice ***whenever*** a parcel becomes subject to the power of sale set forth in *Section 3691* on a form prescribed by the Controller. The county clerk shall take acknowledgment of the notice without charge." [emphasis added.] The original and *only* recorded notices of power to sell tax-defaulted property were invalid, as they had been canceled by the County by "executive delete" on February 3, 2000, prior to the tax sale. Therefore, Petitioner argues that a *new* "notice" pursuant to *section 3691.1* should have been executed and recorded before the Subject Properties could have been sold at a purported tax sale. Petitioner contends that *section 3691.1* is vague and ambiguous as to the term "***whenever a parcel becomes subject to the power of sale.***"

Respondents, the County, the trial court and the Court of Appeals apparently interpret the term "whenever" to mean as only once, after the 5-year tax default occurs. [*Code section 3691(a)(1)(A)*] Petitioner contends that *section 3691.1* notice is not limited to only once, otherwise the *section 3691.1* would have not have stated that notice is required

"***whenever*** a parcel becomes subject to the power of sale" but would have stated that notice is required "***only once after*** a parcel becomes subject to the power of sale."

There is a disparity and conflict in the interpretation of *sections 3691* and *3691.1* among these parties, it is a question that **potentially affects all California owners** of tax-defaulted properties and the receipt of notice of the power to sell their tax-defaulted properties.

Also at trial and upon appeal, Petitioner presented evidence and argued that the Subject Properties were redeemed back to Petitioner by virtue of the recorded rescissions of notice of power to sell tax-defaulted property. Petitioner contends that the Subject Properties were redeemed back to Petitioner by virtue of the County executing the recorded rescissions of notice of power to sell tax-defaulted property and payment of the defaulted taxes.

Section 4112, in pertinent part, provides that, "(c) When tax-defaulted property subject to the notice recorded under Section 3691.4 is redeemed, the notice becomes null and void and the tax collector shall execute and record with the county recorder a rescission of the notice" [emphasis added.] Because the original and *only* recorded notices of power to sell tax-defaulted property were invalid, as they had been canceled by the County by "executive delete" on February 3,

2000, prior to the tax sale, Petitioner's right of redemption was preserved.

Therefore, Petitioner argues that there is no limitation as to who may pay the taxes on the Subject Properties and that the County had accepted the payment of taxes from a volunteer in August 2000. Petitioner contends that *Revenue and Taxation Code section 4112* that governs the recorded rescissions of notice of power to sell tax-defaulted property redeemed the Subject Properties back to Petitioner because the volunteer acquires no right whatsoever by the payment of taxes on the land of another. *Spencer v. Harmon Enterprises, Inc.*, (1965) 234 Cal.App.2d 614.

This Court should grant review to resolve the conflict of *section 3711* "conclusive evidence" provision; *section 3691.1* requirement of providing notice *whenever* the parcel(s) become subject to the power of sale; and *section 4112* redeeming provision. *Section 3711* requires evidence of fraud to overcome the conclusive presumption of validity of the tax sale proceedings, yet an admitted intentional act, negligence or mistake by the County employees under *section 3691.1* is not sufficient to overcome the presumption of validity of the tax sale. If this inherent conflict between *section 3711* and *section 3691.1* is not resolved, **all California owners of tax-defaulted properties are in jeopardy of having their real property sold by tax sale without proper due process notice.** *Section 4112*, that governs the recorded rescissions of notice of power to sell tax-defaulted

property redeemed the Subject Properties back to Petitioner, supersedes the tax sale because Petitioner's right of redemption was preserved after the original and *only* recorded notices of power to sell tax-defaulted property had been canceled by the County by "executive delete" on February 3, 2000, prior to the tax sale.

LEGAL DISCUSSION

California statutory and case law is silent and undetermined on whether a conclusive presumption of the validity of a tax sale overcomes the requirements of proper recordation by the taxing authority of the notice of power to sell the tax-defaulted property. Petitioner hereby challenges the conflict between code *sections 3711, 3691.1* and *section 4112* that has resulted in an inconsistent and harmful taking of real property. Here, the above-referenced code sections, as applied, has upheld and validated the County of Los Angeles' actions in the tax sale. The trial court and Court of Appeals found that Petitioner had received "actual notice" of the tax sale as required under *Revenue and Taxation Code section 3701*, et seq. The lower courts also validated the tax sales pursuant to *section 3711* finding that no fraud had occurred in the process of the tax sale.

There is a discrepancy and ambiguity in *section 3691.1* that requires notice "whenever" the parcel becomes subject to sale. Although *section 3691* defines when parcel becomes subject to the power to sell, Petitioner contends that the notice

requirement arises for each parcel, after the 5-year tax default period and remains valid for until the parcel is either redeemed or the power to sell is otherwise removed. A different interpretation would not be consistent with the language of *section 3691.1*. Petitioner claims that if the legislature had intended for the power to sell to be noticed only once, *section 3691* would have so stated. *Section 3691.1* does not make such limitation, it states notice shall be provided "whenever" the property becomes subject to the power of sale.

In the present situation, the County failed to execute and record *new* notices of power to sell tax-defaulted property for the 2000B Auction Sale of June 27, 2000. This recorded notice of power to sell tax-defaulted property from the County pursuant to *section 3691.1* is a statutory prerequisite to its right to publish and place a tax-defaulted property in a state tax auction where pertinent and vital information are stated, such as, and not limited to, the state assigned item numbers for the tax-defaulted property. These state assigned item numbers are very important to meet **constitutional due process requirements** because they are equivalent to serial numbers in that they identify the state assigned auction sale and auction year that the tax-defaulted property are placed in of which the property owner may accurately and timely oppose or challenge the sale of their tax-defaulted properties.

The validity of the 2000B Auction Sale of June 26, 2000 was affected by the County's failure to follow this statutory prerequisite to its right to publish and place a tax-defaulted property in a state tax auction pursuant to *section 3691.1.* This disparity and conflict in the interpretation of *sections 3691* and *3691.1* among these parties can **potentially affect all California real property owners of their constitutional due process rights** to accurately and timely oppose or challenge the sale of their tax-defaulted properties and the receipt of notice of the power to sell their tax-defaulted properties.

Here, however, Petitioner's alternative presentation of evidence and argument was that the County executive deleted the Subject Properties notices of power to sell tax-defaulted property. Despite Petitioner's evidence and argument, the lower courts held that the County's actions of executive deleting the notices of power to sell tax-defaulted property, prior to the tax sale, and then purportedly selling the real properties without a subsequent execution and a recordation of a new notice of the power to sell tax-defaulted property was statutorily valid. *Section 3691.1* requires that a Tax Collector execute a notice of power to sell tax-defaulted property *whenever* the property becomes subject to the power to sell. The lower courts also ignored Petitioner's offer of evidence and argument that *section 4112* that governed the recorded rescissions of notice of power to sell tax-defaulted property which redeemed the Subject Properties back to Petitioner because a volunteer acquires no

right whatsoever by the payment of taxes on the land of another. *Spencer v. Harmon Enterprises, Inc.*, (1965) 234 Cal.App.2d 614.

A tax sale proceeding is wholly a creature of statute. *Craland, Inc. v. State of California* (1989) 214 Cal.App.3d 1400, 1403, 263 Cal.Rptr. 255; *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 40, 77 Cal.Rptr.2d 709, 960 P.2d 513. It follows that there are no common law remedies for defects in tax sale proceedings. *Van Petten v. County of San* Diego (1995) 38 Cal.App.4th 43, 46, 51, 44 Cal.Rptr.2d 816; 5 Miller & Starr, Cal. Real Estate (3d ed. 2005) section 11:148, pp. 389-393. The *Revenue and Taxation Code* provides: "except as against actual fraud, the [tax] deed duly acknowledged or proved is conclusive evidence of the regularity of all proceedings from the assessment of the assessor to the execution of the deed, both inclusive." [*Revenue and Taxation Code section 3711*] In the absence of specified exceptions that do not apply here, a tax deed "conveys title to the purchaser free of all encumbrances of any kind existing before the sale." [*Revenue and Taxation Code section 3712*]

The presumption of regularity under *section 3711* is rebuttable as to the jurisdictional issue of compliance with due process. *Philbrick v. Huff* (1976) 60 Cal.App.3d 633, 648-649, 131 Cal.Rptr. 733; 5 Miller & Starr, Cal. Real Estate (3d ed. 2005) section 11:148, pp. 389-390. Here, Petitioner challenged the County's failure to comply with the

procedures under Revenue and Taxation Code *sections 3701*, et seq.

Because a tax sale is imposed against an adverse party without consent, "every essential step leading to the execution of a tax deed must be strictly followed." *Paul v. Los Angeles County Flood Control Dist.* (1974) 37 Cal.App.3d 265, 275, 112 Cal.Rptr. 274.

Petitioner elicited testimony of County employees of the executive deletion of the original recorded notices of power to sell tax-defaulted property prior to the tax sale. The County's admitted executive deletion of the original and *only* notices of power to sell tax-defaulted property should have forced the County to remove the parcels from that noticed tax sale and should have required the County to execute and record *new* notices of power to sell tax-defaulted property, pursuant to *section 3691.1.*

Also at trial and upon appeal, Petitioner presented evidence and argued that the Subject Properties were redeemed back to Petitioner by virtue of the recorded rescissions of notice of power to sell tax-defaulted property and payment of property taxes. The trial court dismissed the recorded rescissions of notice of power to sell tax-defaulted property as a confusing practice by the County, in the context of a default sale because it was prompted by the payment of the taxes. However, the language stated on the recorded rescissions of notice of power to sell tax-defaulted

property contradicts the trial court's opinion in that certificates of redemption exist for Petitioner, having number 020009330 attesting to the payment of the amount required to redeem the property assessed to Petitioner.

Petitioner contends that the Subject Properties were redeemed back to Petitioner by virtue of the County executing the recorded rescissions of notice of power to sell tax-defaulted property. *Section 4112*, in pertinent part, provides that, "(c) When tax-defaulted property subject to the notice recorded under Section 3691.4 is redeemed, the notice becomes null and void and the tax collector shall execute and record with the county recorder a rescission of the notice" [emphasis added.] Petitioner's right of redemption was preserved because the original and only recorded notices of power to sell tax-defaulted property were invalid, as they had been canceled by the County by "executive delete" on February 3, 2000, prior to the tax sale. Therefore, Petitioner argues that there is no limitation as to who may pay the taxes on the Subject Properties and that the County had accepted the payment of taxes from a volunteer in August 2000. Petitioner contends that *section 4112*, that governs the recorded rescissions of notice of power to sell tax-defaulted property, redeemed the Subject Properties back to Petitioner because the volunteer acquires no right whatsoever by the payment of taxes on the land of another. *Spencer v. Harmon Enterprises, Inc.* (1965) 234 Cal. App. 2d 614.

Petitioner acknowledges the stated purpose of *section 3711* is for the protection of the process of tax sales against challenges against minor mistakes. The conclusive evidence of *section 3711* can be challenged for jurisdictional due process violations or for fraud. However, Petitioner claims that jurisdictional or fraud challenges cannot be the exclusive remedy for dispossessed property owners. *Section 3711* cannot stand to conclusively presume the validity of tax sale when the County admits to making intentional, negligent or mistaken actions that deprive the property owner of its property.

In the present situation, the County admitted that the notices of power to sell tax-defaulted property were "executive deleted" prior to the tax sale, this is an integral element of "notice" to the property owner. Any failure of notice to the property owner should invalid the tax sale and the transfer of the real property. The statutory scheme behind the taking and selling of tax-defaulted property requires notice to the property owners, not only of the tax sale but the County's right and power to sell the tax-defaulted parcels. Even though the lower courts found that Petitioner had actual notice of the tax sale, if the notices of power to sell tax-defaulted property had been "executive deleted", prior to the tax sale, Petitioner failed to have proper notice of the County's power to sell the parcels.

The legislature cannot make a tax deed conclusive evidence of jurisdictional matter prerequisite to state's right to execute a deed to a purchaser at tax sale. *Litchfield v. Marin County* (1948) 83 Cal.App.2d 730, 189 P.2d 750. *Sections 3711, 3365, 3518* and *3701*, which authorize sale of property for delinquent taxes without actual notice to owner cannot cure jurisdictional defect, that is, one which is constitutionally indispensable step. *Chesney v. Gresham* (1976) 64 Cal.App.3d 120, 134 Cal.Rptr. 238.

CONCLUSION

There are undetermined areas of law within California's tax-defaulted real property laws under the *Revenue and Taxation Code*. Petitioner contends that there is an ambiguity in *section 3691.1* as to whether the taxing authority is required to record the notice of power to sell tax-defaulted property only once or each time the real property is subject to sale. There is also the unanswered question of whether the County, prior to the tax sale, can "executive delete" the notice of power to sell tax-defaulted property and subsequently, sell the Subject Properties without executing and recording a *new* notice of power to sell tax-defaulted property. Additionally, *section 3711* cannot be used to conclusively validate a tax sale when the County admitted making errors in regards to the tax sale.

Furthermore, *section 4112* that governs the recorded rescissions of notice of power to sell tax-defaulted property supersedes the tax sale because Petitioner's right of redemption was preserved after the original and *only* recorded notices of power to sell tax-defaulted property had been canceled by the County, prior to the tax sale, by "executive delete" on February 3, 2000. Because there is no limitation as to who may pay the taxes on the Subject Properties, the County had accepted the payment of taxes from a volunteer in August 2000, who acquired no right whatsoever by the payment of taxes on the land of another.

This Court should grant review to resolve the conflicts of *section 3711* "conclusive evidence" provision and *section 3691.1* requirement of providing notice *whenever* the parcel(s) become subject to the power of sale along with *section 4112* redeeming provision. *Section 3711* requires evidence of fraud to overcome the conclusive presumption of validity of the tax sale proceedings, yet an admitted intentional act, negligence or mistake by the County employees under *section 3691.1* and *4112* is not sufficient to overcome the presumption of validity of the tax sale. If this inherent conflict between *section 3711* and *section 3691.1* along with *section 4112* is not resolved, all California owners of tax-defaulted properties are in jeopardy of having their real property taken and sold by the taxing authorities, without proper due process of the law.

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Respectfully submitted,

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